

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 04-11836-RCL

TRANS-SPEC TRUCK SERVICE, INC.)
d/b/a TRUCK SERVICE,)
Plaintiff)

vs.)

CATERPILLAR INC.)
Defendant)

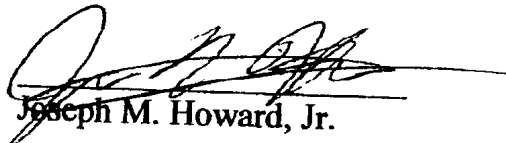
**AFFIDAVIT OF JOSEPH M. HOWARD, JR.,
IN SUPPORT OF PLAINTIFF'S MOTION TO AMEND**

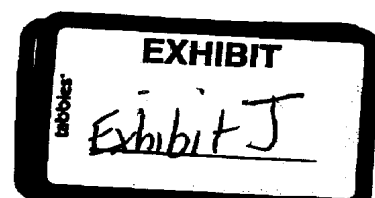
I, Joseph M. Howard, Jr., state:

1. I am the President of Trans-Spec Truck Service, d/b/a Truck Service ("Trans-Spec").
2. Trans-Spec initiated this litigation only after years of negotiation with Caterpillar Inc. ("Caterpillar") and its local agent and distributor, Southworth Milton, Inc. ("Milton"), failed to remedy its losses.
3. Trans-Spec declined to file suit during this time because it relied on assurances that Caterpillar would compensate it for the damages it suffered.
4. When Caterpillar repeatedly failed to make Trans-Spec whole for the damages it suffered, Trans-Spec reluctantly commenced this litigation on August 23, 2004.

SIGNED UNDER THE PENALTIES OF PERJURY THIS ____ DAY OF JUNE, 2005.

00922169


Joseph M. Howard, Jr.



DEPO OF AL CARDOZA
TUESDAY, MAY 31, 2005

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EXHIBITS: 1 - 16

COMMONWEALTH OF MASSACHUSETTS
WORCESTER, ss. SUPERIOR COURT DEPARTMENT
C.A. NO. 2005-00387-A

-----x
TRANS-SPEC TRUCK SERVICE, INC.
d/b/a TRUCK SERVICE,
Plaintiff

vs

MILTON CAT f/k/a
SOUTHWORTH-MILTON, INC.

Defendant

-----x
- and -

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

C.A. NO. 04-11836-RCL

-----x
TRANS-SPEC TRUCK SERVICE, INC.
d/b/a TRUCK SERVICE,

Plaintiff

vs

CATERPILLAR, INC.,

Defendant

-----x

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EXHIBIT

tabbies
Exhibit K

1 A. He may have asked a question about it, but in
2 relationship to the 3176, the similarities are
3 very, very close to the C12.

4 Q. You told him that the 3176 was similar to the
5 C12?

6 A. Yes.

7 Q. The 3176 and the C12 are a similar engine?

8 MR. GRUNERT: I object to the form.

9 A. Very similar.

10 Q. Is the C12 a revision of the 3176?

11 A. Yes.

12 Q. Do you remember anything more about the
13 conversation with Mr. Lynd regarding the
14 serviceability issues?

15 A. Not that I know of.

16 Q. Did you call him or did he call you, or was it
17 in person?

18 A. It was probably a one-on-one conversation.

19 Q. Do you remember where that was?

20 A. Over at Trans-Spec's facility.

21 Q. What were you doing over at tran speck's
22 facility?

23 A. Andy may have had a question on a given spec or
24 something that he's requested and either I

1 happened to be going by, or stopped over.

2 Q. I may have asked you this, but do you remember
3 when this meeting took place?

4 A. No, I do not.

5 Q. But he had a question about spec regarding the
6 C12?

7 A. Curiosity factor on his behalf.

8 Q. This was around the time that Trans-Spec was
9 purchasing the new trucks?

10 A. I would presume so.

11 Q. Did you have a laptop computer with you at the
12 time that you met with Mr. Lynd?

13 A. More than likely, yes.

14 Q. Did you use that laptop in your conversation
15 with Mr. Lynd?

16 A. I may have.

17 Q. What may have you used the laptop to do with
18 Mr. Lynd during this conversation?

19 A. Be more specific.

20 Q. Well, what did you use the laptop for? You're
21 in a meeting with Mr. Lynd and you had your
22 laptop with you. What did you use it for?

23 A. Unless he wants to program a truck or discuss
24 programming of his customer parameters, there

1 would be no reason for me to use it, unless he
2 brought up a question regarding what is known as
3 Caterpillar E T, electronic technician.

4 Q. During this meeting with Mr. Lynd, did you input
5 various permutations of conditions into the
6 laptop to show Mr. Lynd various capabilities of
7 the C12 or any other Caterpillar engines?

8 A. No.

9 Q. So you went over there around the time that
10 Trans-Spec was looking to purchase the trucks,
11 and you talked to Mr. Lynd about the C12 being
12 similar to the 3176 arcs and you think about
13 some of the specifications of the C12?

14 A. We didn't go into specifications, to my
15 knowledge.

16 Q. And you were never present when Mr. Calderbank
17 gave or showed anyone at Trans-Spec any
18 information regarding the C12 capabilities or
19 comparing it with competitive engines?

20 A. I don't believe so.

21 Q. No such conversation ever took place at the 99
22 restaurant?

23 A. I don't believe so.

24 Q. What is Caterpillar extended service coverage?

DEPO OF AL CARDOZA
TUESDAY, MAY 31, 2005

EXHIBIT

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- 1 A. Basically, was instructed that it's not a
2 Caterpillar problem, and to so notify the
3 dealers and our customer.
4 Q. And that was in the conversation with
5 Mr. Guidotti?
6 A. Correct.
7 Q. Did he elaborate? Was there anything else that
8 he said during that conversation, or was it a
9 30-second phone call in which he gave you this
10 information?
11 A. They basically thought it was or felt that it
12 was an OEM engineering problem.
13 Q. Whose problem, specifically, did they think it
14 was?
15 A. Sterling.
16 Q. They told you this, or who told you this? Was
17 it Mr. Guidotti, or were they both on the
18 phone?
19 A. Both on the phone.
20 Q. So you called Mr. Guidotti, and then they
21 patched --
22 A. The two of them were talking together in the
23 vehicle, speakerphone.
24 Q. Oh, okay.

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- 1 So they informed you that that was a
2 Sterling problem, and that Caterpillar was not
3 going to warrant the flywheel housing and the
4 flywheel housing bolt failures?
5 A. That's correct.
6 Q. What did you say?
7 A. I was not happy with the answer, and asked, Give
8 me more specifics, which they could not do.
9 Because I was compelled to notify my dealers
10 that they were no longer going to be paying for
11 the warranty claims, any further warranty
12 claims, and that I also had to notify my
13 customer.
14 Q. Who at the dealers did you contact?
15 A. Minuteman, Tri-State.
16 Q. At Minuteman, is that --
17 A. Bill Witcher.
18 Q. At Tri-State?
19 A. Tri-State could be Kevin Holmes. It could have
20 been -- I forget who was on the service desk at
21 the time. There was somebody else on there.
22 Q. It could have been the service manager or
23 someone?
24 A. Whoever the service manager was at the time.

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- 1 Q. Did you tell anyone at Southworth about this?
2 A. Southworth was also, our service department, was
3 also notified of such.
4 Q. Who at the service department at Southworth
5 would you have told?
6 A. Primarily, the service manager, general service
7 manager, Ken Faulkner, F A U L K N E R.
8 Q. Any other dealers or individuals that you told?
9 A. I contacted Mr. Howard.
10 Q. What did you say to Mr. Howard?
11 A. That Caterpillar is no longer going to be
12 involved in warranty claims regarding the
13 flywheel housings, and that it is a structural
14 issue with the vehicle.
15 Q. What did Mr. Howard say?
16 A. Of course, he was not happy.
17 Q. Was this in person, or did you call him?
18 A. I happened to, the quickest way possible, to
19 notify him, and that was via phone.
20 Q. I know that there were other meetings involving
21 Mr. Guidotti and other people, and we'll get to
22 those.
23 But in around this time period, late
24 2002, did you have any other conversations with

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- 1 Mr. Guidotti or Mr. Smith regarding the decision
2 to stop warranting Trans-Spec's engines?
3 A. For my own peace of mind in getting to the root
4 cause of the problem, I would frequently ask if
5 they found any new information, discussing it on
6 an at least a once-a-month basis, minimum, and
7 obviously talking with Jay Howard.
8 Q. So about once a month, you would bring it up
9 with the Caterpillar people in Connecticut?
10 A. Course of conversation, obviously. They're my
11 customer, and I'm concerned for the product
12 itself. You know, we don't sell the engines.
13 We don't sell the trucks. But they're a very
14 good Cat customer to us, and we don't want to
15 see them hurt.
16 Q. What did Mr. Guidotti and Mr. Smith say every
17 time that you brought it up with them?
18 MR. GRUNERT: I object to the form.
19 A. You've got to be specific here.
20 Q. Well, once a month, you said that you raised it,
21 and you didn't say specifically what you, or
22 what the conversations that you would have with
23 Mr. Guidotti or Mr. Smith. But after this
24 initial discussion with them as to their denial

(Pages 114 to 117)

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- 1 of warranty coverage, you said that you
2 continually raised it at least once a month.
3 And what I'm asking you is, what would
4 their response be when you would say, Any change
5 on this situation?
6 **A. Engineering is looking into it, that type of**
7 **comment back to me.**
8 Q. Did you speak to anyone above Mr. Guidotti or
9 Mr. Smith, at this point?
10 **A. No.**
11 Q. Have you personally inspected Trans-Spec's
12 engines? And when I say "engines," I mean the
13 ones at issue in this lawsuit.
14 **A. Yes.**
15 Q. How many times?
16 **A. Well, I've been at their facility at least a**
17 **half a dozen times.**
18 Q. So you inspected the engines at Trans-Spec
19 around a half a dozen times.
20 How many times would you say that you've
21 inspected the engines at Tri-State?
22 **A. Equally.**
23 Q. How about Minuteman?
24 **A. Equally.**

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- 1 Q. So around a half a dozen times at each of
2 those?
3 **A. Each.**
4 Q. How many times at Southworth-Milton?
5 **A. I'd probably say a half a dozen times.**
6 Q. Around two dozen times in all, give or take?
7 **A. Yes. I'm intimate with the problem.**
8 Q. When was your first inspection of one of these
9 engines that's at issue in this lawsuit?
10 **A. November of 2002.**
11 Q. Where did this inspection take place?
12 **A. At Minuteman.**
13 Q. Who called you to inspect the engine?
14 **A. Probably, Bill Witcher.**
15 Q. Was this after Caterpillar had denied warranty
16 coverage on these?
17 **A. No, before.**
18 Q. This was before?
19 **A. Yes.**
20 Q. What did Mr. Witcher tell you?
21 **A. I said 2002.**
22 Q. The first time to inspect the engine?
23 **A. Yeah. I'm pretty sure it was November of 2002,**
24 **so that the conversation that I had with**

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- 1 **Mr. Guidotti and Mr. Smith was September of**
2 **2003.**
3 Q. Could the meeting at Minuteman with Mr. Witcher
4 when he called you down have been in 2001?
5 **A. No. He received delivery of the trucks in**
6 **January of 2001.**
7 Q. No, of 2000.
8 **A. Of 2000?**
9 Q. He received delivery in 2000.
10 **A. 2000, so 2001, yeah, 2001, probably, November.**
11 Q. So the denial of warranty coverage was in the
12 fall of 2002, and this conversation with Mr.
13 Witcher of Minuteman was in November of 2001, is
14 that correct?
15 **A. That's correct.**
16 Q. What happened at this inspection in November of
17 2001 at Minuteman?
18 **A. Well, this is a first incident. As I recollect,**
19 **the flywheel housing bolts were loose. There**
20 **was no unusual damage other than the fact that**
21 **the bolts had either backed out, possibly had**
22 **broken one, but nothing that was, or would send**
23 **off signals that we have a major problem.**
24 Q. What came of that meeting?

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- 1 **A. It was to remove the housing and inspect and**
2 **replace any parts that were worn, reassemble it**
3 **and make sure that the bolt torques were**
4 **accurate.**
5 Q. How many more inspections of Trans-Spec engines
6 did you perform between this first inspection in
7 November of 2001 and the denial of warranty
8 coverage in August or September of 2002?
9 **A. I believe seven vehicles.**
10 Q. Where did you perform those inspections, to the
11 best that you remember?
12 **A. I want to say they all took place at Minuteman.**
13 Q. Was the result the same every time?
14 **A. Some worse than others.**
15 Q. Was it always the same repair that was
16 performed, or were there other techniques or
17 ideas that were tried?
18 **A. As I recollect, the first two were basically**
19 **just, you know, inspect parts, refasten, make**
20 **sure that the bolt torques were accurate. I**
21 **believe the third one came in with housing**
22 **damage beyond what I thought was satisfactory to**
23 **repair and replace the housing. That's when**
24 **kind of the third time is the charm.**

1 I would discuss my problems.
2 Q. So you had no conversations directly with
3 Caterpillar; correct?
4 A. Who's that?
5 MS. REIMER: Objection.
6 A. No.
7 Q. No, did you not?
8 A. No, I did not.
9 Q. And up until June 2004 you had no
10 conversations directly with Caterpillar in 2004 on
11 the subject; correct?
12 MS. REIMER: Objection.
13 A. I don't understand who Caterpillar is.
14 There's a difference between Caterpillar and
15 Southworth that I don't understand.
16 Q. The conversations you had were with
17 Mr. Calderbank and Mr. Cardoza; correct?
18 A. Yes.
19 Q. You didn't have any conversations with
20 Troy Guidotti until June 2004 on the subject of
21 compensating Trans-Spec for the expenses and losses
22 it had incurred; correct?
23 A. There were ongoing conversations with
24 other people. I just don't recall who the other
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1 that meeting occurred and everyone who was there.
2 A. We've had -- I've had many meetings with
3 Caterpillar representatives at Southworth, whether
4 they were Caterpillar or not, about all different
5 types of problems that they've always taken care of.
6 And the flywheel housing issues were brought up in
7 one. It wasn't a major problem at the time because
8 it had just started. But they were very well aware
9 of it, and at that time they were still paying for it
10 and repairing them. So it wasn't even an issue. So
11 I don't recall the specific day or exactly what the
12 meeting was primarily about.
13 Q. You had a meeting sometime after the first
14 flywheel housing failure occurred but before
15 Caterpillar stopped reimbursing for the flywheel
16 housing failures, and the meeting was at
17 Southworth-Milton?
18 A. Yes.
19 Q. And who was present at the meeting?
20 A. Well, it was always Harry Calderbank and
21 Al Cardoza.
22 Q. Who else was there?
23 A. I really don't remember. I mean, I'm not
24 sure if they worked for Southworth or Caterpillar
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1 people were in this specific subject. But other
2 problems we had spoken to numerous different
3 Caterpillar people that, when we had a problem, Harry
4 Calderbank or Al Cardoza would get somebody to come
5 up and bring them up and we would discuss the
6 problems.
7 Q. What I'm interested in is knowing with
8 whom you were carrying on negotiations in the year
9 2003 and the first part of 2004 concerning relief
10 that you expect to get from Caterpillar for the
11 flywheel housing problems Trans-Spec was
12 experiencing. Who were those negotiations with?
13 A. Negotiations. I know there's a simple
14 answer to this. I just don't happen to know what it
15 is. But negotiations when you're trying to speak
16 with somebody that will negotiate on something
17 admitting they're being owed something, and the whole
18 idea was to have somebody from Caterpillar agree that
19 there was something owed. And in 2004 Troy and
20 Steve, Troy Guidotti and Steve Schoening agreed on
21 that subject. There was a meeting prior to that. I
22 can picture it. Nothing happened out of it, but that
23 was our first meeting. It was at Southworth in a big
24 conference room the size of this.
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1 themselves.
2 Q. Regardless of who they were employed by,
3 I'm just interested in the names of the individuals
4 who were present.
5 A. I can't tell you.
6 Q. Was anyone from Trans-Spec other than
7 yourself present?
8 A. I can't recall that either. At times
9 there were.
10 Q. What did you say on the subject of the
11 flywheel housings and what did Mr. Cardoza or
12 Mr. Calderbank say?
13 A. I shouldn't have brought it up, but like
14 I've already testified to, it wasn't a problem at the
15 time because they were taking care of it. It
16 wasn't a consistent -- it was early enough that it
17 wasn't a real serious damaging problem. It was prior
18 to that. So it was early. It might even have been
19 about the previous trucks. I don't know. But it was
20 about the front covers, turbo chargers. We were
21 paying for turbo chargers when I didn't think we
22 should have been. They always discussed the problem
23 and then took care of it, until later in the game.
24 Q. Do you remember anything Mr. Cardoza said
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1 Q. There was a meeting in June and there was
2 a meeting in August?
3 A. There was one before that too.
4 Q. There was a third meeting?
5 A. There was a meeting prior to that.
6 Q. With Caterpillar people present?
7 A. You know, there was a lot of people there.
8 And at that time I didn't know the difference between
9 Caterpillar and Southworth. I thought it was one in
10 the same. I thought Al Cardoza and Harry Calderbank
11 worked for Caterpillar. They were selling me
12 warranties from Caterpillar. They were selling me
13 everything from Caterpillar. It wasn't Southworth.
14 Their truck said Caterpillar. Their shirt said
15 Caterpillar. Their hats and I think their undies did
16 too. I can't prove that. But they were Caterpillar
17 through and through. And they represented
18 Caterpillar in my book, and I purchased all that
19 stuff from Caterpillar. And so to differentiate
20 between the two, I really don't know how to answer
21 that.
22 Q. This is the first time I'm hearing about
23 an earlier meeting concerning the flywheel housing
24 problems you were having. So please tell me when
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1 at that meeting?
2 A. No, nothing that would stand out.
3 Q. Do you remember anything Mr. Calderbank
4 said at that meeting?
5 A. No. The problems were just taken care of,
6 and it was a non-issue.
7 Q. So I return to my question. After you
8 brought to Mr. Parks's attention the flywheel housing
9 problem that you were having and Caterpillar's
10 unwillingness to grant you relief that you thought
11 you were entitled to, what negotiations, what
12 discussions toward obtaining relief were you having,
13 who were you having them with?
14 A. Well, in March we were talking about a
15 meeting. And then it was supposed to happen in
16 April, and then it was postponed until June, and then
17 they decided to have another meeting which was in
18 August. And too much time was passing by, and
19 nothing was being corrected fast enough. And in June
20 they agreed to -- I believe it was June. They agreed
21 to start fixing trucks again, but it wasn't getting
22 done to the point that it was helping us. Trucks
23 were still down so, you know, so many of them down
24 for such a long period of time.
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Exhibit 7